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7590 03/12/2004			EXAMINER	
Norris McLaughlin & Marcus 220 East 42nd Street 30th Floor New York, NY 10017			CHANG, VICTOR S	
			ART UNIT	PAPER NUMBER
			1771	
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**MAILED**  
MAR 12 2004  
**GROUP 1700**

Paper No. 030304

Application Number: 09/763,679  
Filing Date: May 15, 2001  
Appellant(s): REINERS ET AL.

William C. Gerstenzang  
For Appellant

**EXAMINER'S ANSWER**

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This is in response to the appeal brief filed 12/22/2003.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

Appellant's brief includes a statement that claims stand or fall together.

**(8) *Claims Appealed***

Claims 19-21 are absent from the Appendix to the brief. Accordingly, claims 19-21 are correctly written in the Appendix to the Examiner's Answer.

**(9) *Prior Art of Record***

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-17 and 19-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Laurent et al. (US 6132539). This rejection is set forth in prior Office Action, Paper Nos. 8 and 0723.

Laurent's invention is directed to a laminate comprising a polyolefin foam layer which is laminated to a sealing film having at least a first layer of a polyolefin. During the lamination a second layer is located between the first layer and the foam layer; the second layer is extruded therebetween and pressure is immediately applied. The second layer and the first layer are polyolefins each based on the same monomer as the main monomer of the foam layer (Abstract). Laurent also teaches that a polypropylene foam layer is suitable for producing thermoformable laminate trays for food packaging (column 1, lines 12-15). Depending on the composition and thickness of the coating film, this film may also serve as a further means for increasing the stiffness. Usually the coating film (second layer or bonding layer) carries on its surface facing away from the foam layer a sealing layer (first layer) (column 1, lines 27-32). In Fig. 3, Laurent shows the cross section of one embodiment of the packaging laminate, which consists of a foam layer B and a bonding layer 30 (column 4, lines 5-9), which reads on the instantly claimed Base foam layer A and layer B, respectively. Advantageous thicknesses for the bonding layer 30 (instantly claimed layer B) and foam layer (instantly claimed layer A) are 5 to 30  $\mu\text{m}$  and 0.5-2 mm, respectively (lines 29-

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34). Additionally, Laurent teaches that the laminate comprises adhesive layers (e.g., layers 12 and 13 of Fig. 3).

For claims 1-17 and 21, it is noted that Laurent teaches all the non-optional elements of the instant claimed invention, except an express teaching of the range of thickness ratio between foam layer B and bonding layer 30. However, it is believed that adjusting the thickness of the bonding layer (and consequently the thickness ratio between the foam layer and bonding layer) is well within the ordinary skill of the art, motivated by the desire to provide suitable mechanical properties, such as stiffness, to the thermoformed tray, as taught by Laurent. Regarding the layers C, D, E and G in claim 1, since they are claimed as optional, there is no requirement for the prior art to provide or account for them. As such, they do not constitute limitations in any patentable sense. See MPEP § 2106.

For method claims 19 and 20, Laurent teaches that the thermoformable laminate trays is suitable for packaging food (column 1, lines 12-15), and the applied prior art is clearly to be used in a packaging machine as here claimed.

**(11) Response to Argument**

Applicants' statement at page 4, second paragraph, of the Appeal Brief "The Examiner points to column 1, lines 12-15, where Laurent, in discussing the prior art, mentions foamed polypropylene layers coated on either or both sides with a coating film, and that "Depending on the composition and thickness of the coating film, this film may also serve as a further means for increasing thickness" (office action of 1/30/03,

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paper # 8, page 3)" is erroneous, the Examiner notes that the second "thickness" should be corrected as "stiffness", as taught by Laurent.

With respect to Appellants' argument that "Nowhere can there be found any teaching or suggestion that the substantial improvement in mechanical properties demonstrated by Appellants' examples could be achieved by maintaining the total thickness of layers A + B in the range of 0.5 to 2.0 mm and the thickness of layer B in the range of 1/6 to 1/2 of the thickness of layer A" (Appeal Brief, page 5, top paragraph), the Examiner notes that the aforementioned teaching by Laurent clearly shows that the thickness of the coating film (bonding layer), which reads on Appellants' layer B, can be increased to increase the stiffness (a mechanical property) of the laminate. Regarding the thickness ratio between layers A and B, although Laurent teaches advantageous thicknesses for the bonding layer 30 (instantly claimed layer B) and foam layer (instantly claimed layer A) are 5-30  $\mu\text{m}$  and 0.5-2 mm, respectively, as set forth above, nowhere is there a teaching by Laurent that the advantageous (preferred) thickness of the bonding layer is a limiting element, and it would have been obvious to one of ordinary skill in the art to suitably increase the thickness of the bonding layer, motivated by the desire to provide suitable mechanical properties, such as stiffness, to the thermoformed tray. As to the total thickness of layers A and B, the Examiner notes that Laurent's advantageous thickness of the bonding layer and foam layer clearly reads on the instantly claimed total thickness of layers A and B.

With respect to Appellants' argument that "Appellant's have discovered that by maintaining the ratio of the thicknesses of layers B:A within a specific range, in

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combination with maintaining the total thickness of A+B within a specific range, they achieved a surprising improvement in mechanical properties ... THIS CONSIDERABLE IMPROVEMENT IS ACHIEVED WITHOUT ANY INCREASE OF THE MULTILAYER FILM ..." (Appeal Brief, page 7, bottom paragraph), the Examiner notes that the advantageous total thickness (of layers A and B) of Laurent's laminate reads on instantly claimed invention, as set forth above. Since Laurent's advantageous thickness of foam layer ranges from 0.5 to 2 mm, and a polypropylene foam layer is inherently less effective to increase the stiffness of the foam/film laminate, it would have been obvious to one of ordinary skill in the art to modify the thickness of the polypropylene coating film (bonding layer) within a suitable range of total foam/film thickness, as taught by Laurent, motivated by the desire to provide suitable mechanical properties, such as stiffness, to the thermoformed tray.

Finally, with respect to Appellant's argument that the Examples in Tables 1 and 2 show "the thinner inventive film had a better physical properties than the thicker comparative film" (Appeal Brief, page 7, bottom paragraph), the Examiner notes that in fact Laurent's foam layer thickness of 0.5-2 mm (500-2000  $\mu\text{m}$ ) reads on the thickness of the foam layer A (800  $\mu\text{m}$ ) of the Example in Table 1, and although the bonding layer B is thicker than Laurent's non-limiting advantageous (preferred) range of thickness, Laurent also expressly teaches that the thickness of the bonding layer can be modified to increase the stiffness of the laminate, as set forth above. As such, it is the Examiner's position that Laurent clearly teaches the laminate of Table 1 as well, and the increased mechanical property of the laminate is also expected.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Examiner  
Art Unit 1771

March 8, 2004

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Appendix

Claim 19. A method for packaging meat, sausage or cheese which comprises packaging said meat, sausage or cheese in a multilayer film according to Claim 1.

Claim 20. A method of packaging material on form-, fill- and sealing packaging machines which comprises packaging said material in a film of Claim 1.

Claim 21. A food packaging container which comprises the multilayer film of Claim 1.